

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DAVE SCOTT, #873139

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:18cv471,
4:18cv541, and 4:18cv542

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that the petitions for writ of habeas corpus should be dismissed without prejudice to Petitioner's right to file a motion for leave to file successive § 2254 petitions in the United States Court of Appeals for the Fifth Circuit. Petitioner filed objections.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such actions, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. In his objections, Petitioner asserts that, because his prior petitions were dismissed as time-barred, they were not actually "filed" for purposes of successive petitions. He is mistaken. The Court dismissed Petitioner's earlier petitions with prejudice because they were time-barred, which constitutes an adjudication on the merits for successive purposes. *See, e.g., Villanueva v. United States*, 346 F.3d 55, 61 (2nd Cir. 2003) (Dismissal of a habeas action as untimely under AEDPA presents a permanent and incurable bar to federal review of the merits of the claim, which cannot be corrected; accordingly, the dismissal constitutes an adjudication on the merits for successive purposes.). Therefore, the Court hereby adopts the findings and

conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** the petitions for writ of habeas corpus are **DISMISSED** without prejudice.

It is further **ORDERED** all motions not previously ruled on are hereby **DENIED**.

SIGNED this 25th day of October, 2018.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE